

CHAPTER 1
GENERAL RULES

Section 1. **Authority.**

(a) These rules are promulgated as authorized by the Wyoming Administrative Procedure Act, W.S. 16-3-301 through 16-3-115, and the Wyoming Environmental Quality Act, as defined by W.S. 35-11-103(xiii). These rules shall apply in all proceedings before the Department of Environmental Quality and the Environmental Quality Council.

(b) In case of conflict between these rules and the provisions of the Wyoming Administrative Procedure Act or the Wyoming Environmental Quality Act, those acts shall govern.

(c) All hearings before the Council shall be held pursuant to these rules, the provisions of the Wyoming Environmental Quality Act, and the Wyoming Administrative Procedure Act.

Section 2. **Definitions.**

The following definitions are intended to supplement the definitions set forth and contained in the Wyoming Administrative Procedure Act and the Wyoming Environmental Quality Act:

(a) “Attorney” means an attorney licensed to practice law in the State of Wyoming or an attorney who is allowed by the Wyoming State Bar to practice law in the State of Wyoming;

(b) “Contested case” means a proceeding in which legal rights, duties, or privileges of a party may be determined by the Council after an opportunity for hearing;

(c) “Council” means the Environmental Quality Council;

(d) “Hearing officer” means a person designated by the Chair of the Council to conduct contested case and rulemaking hearings;

(e) “Office” means the Office of Administrative Hearings;

(f) “Petition” means a written request for relief, submitted to the Council, in accordance with the Wyoming Environmental Quality Act;

(g) “Petitioner” means a person who submits a written request for relief to the Council in accordance with the Wyoming Environmental Quality Act;

(h) “Representative” means an officer or employee other than an attorney who is authorized to function in a representative capacity on behalf of a corporate party to a contested case;

49 **Section 3. Computation of Time.**

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51 (a) In computing any period of time prescribed or allowed by these rules, by order
52 or by any applicable statutes or regulations, the day of the act, event, or default from which
53 the designated period of time begins to run shall not be included. The last day of the period so
54 computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act
55 to be done is the filing of a paper, a day on which weather or other conditions have resulted in
56 official agency office closures, in which event the period runs until the end of the
57 following day which is not one of the aforementioned days. When the period of time
58 prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays
59 shall be excluded in the computation. As used in this rule, "legal holiday" includes any day
60 officially recognized as a legal holiday in this state by designation of the legislature or
61 appointment as a holiday by the governor.

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63 (b) Whenever a party has the right or is required to do some act within a prescribed
64 period, three days shall be added to the prescribed period. The three-day provision does not
65 apply to rulemaking deadlines.

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67 **Section 4. Notice of Hearing.**

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69 (a) The Council or its designee shall provide notice of any hearing, which shall
70 include:

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72 (i) The time, place, and nature of the hearing;

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74 (ii) The legal authority and jurisdiction under which the hearing is to be held;

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76 (iii) The particular sections of the statutes and rules involved; and

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78 (iv) A short and plain statement of the matters asserted. If the Council
79 is unable to state the matters in detail at the time the notice is provided, the initial notice may be
80 limited to a statement of the issues involved, and upon a party's request, a more definite
81 and detailed statement shall be furnished.

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83 (b) The Council may provide notice by posting through its website.

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85 **Section 5. Record of Proceedings.**

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87 (a) All proceedings shall be recorded verbatim stenographically or by another
88 appropriate means determined by the Council.

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90 (b) The compensation of any court reporter shall be paid as required by law and as
91 ordered by the Council. The Council may direct any party or parties to assume the cost of the
92 transcript.

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94 (c) Certified copies of the transcript may be obtained by any party or interested
95 person from the court reporter taking the testimony at such fee as the court reporter may charge.

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97 (d) The Council shall make appropriate arrangements to assure that a record of the

proceeding is kept pursuant to W.S. 16-3-107(o) and (p).

Section 6. Contested Surface Water Discharge Permit Hearings.

Members of the Council shall recuse themselves from contested case proceedings involving the review of surface water discharge permits if they derive a significant portion of their income directly or indirectly from the permit holder or applicant for the permit subject to review by the Council, in accordance with the Clean Water Act, Section 304(i)(d), 33 U.S.C. § 1314(i)(d), and 40 C.F.R. § 123.25(c).

Section 7. Air Quality Division, State Implementation Plan.

(a) The following are the only requirements in these procedural rules that are part of the Air Quality Division's State Implementation Plan:

(i) The Council shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to Air Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1), 42 U.S.C. § 7428(a)(1);

(ii) Members of the Council shall disclose any potential conflicts of interest in a public meeting of the Council, as required by the Clean Air Act, Section 128(a)(2), 42 U.S.C. § 7428(a)(2).

(b) All other requirements of these procedural rules, except those described in Section 7, are reserved to the authority of the State and are not part of the Air Quality Division's State Implementation Plan.

Section 8. Appeals to Council.

(a) Where authorized by the Wyoming Environmental Quality Act, appeals to the Council from final actions of the Administrators or Director shall be made within thirty (30) days of notification of such action.

(b) Within thirty (30) days after notification of the Director's decision following an informal conference governed by Chapter 9, Section 2 of these rules, the applicant or any person with an interest that is or may be adversely affected may appeal the decision to the Council for a hearing in accordance with Chapters 1 and 2 of these rules. The Council shall make a final written decision within thirty (30) days after the hearing and furnish the decision to the applicant and all parties to the hearing.

(c) Where a hearing is requested under subsection (b) of this section, the Council may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(i) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The persons requesting that relief shows that there is a substantial

147 likelihood that he will prevail on the merits of the final determination of the proceeding;

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149 (iii) Such relief will not adversely affect the public health or safety or cause
150 significant imminent environmental harm to land, air, or water resources; and

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152 (iv) The relief sought is not the issuance of a permit where a permit has been
153 denied by the Director.

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155 **Section 9. Appeals from Final Council Action.**

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157 Any party to an action before the Council may seek judicial review of the Council's
158 final decision, in accordance with applicable law and court rules.

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160 **Section 10. Incorporation by Reference.**

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162 (a) These rules incorporate by reference the following statutes, rules, and
163 regulations, as in effect of July 1, 2016:

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165 (i) Section 128(a) of the Clean Air Act, 42 U.S.C. § 7428(a), available at:
166 <https://www.gpo.gov/fdsys/>;

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168 (ii) Section 304(i)(d) of the Clean Water Act, 33 U.S.C. § 1314(i)(d),
169 available at: <https://www.gpo.gov/fdsys/>; and

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171 (iii) 40 C.F.R. § 123.25(c), available at: <http://www.ecfr.gov>.

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173 (b) These rules do not incorporate later amendments or editions of the incorporated
174 matter.

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176 (c) All incorporated matter is available for public inspection at the Department's
177 Cheyenne office. Contact information for the Cheyenne Office may be obtained at
178 <http://deq.wyoming.gov> or from (307) 777-7937.